

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 12, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES REMINGTON,

Defendant.

No. 2:22-CR-00033-TOR-1

ORDER GRANTING IN PART AND
DENYING IN PART
DEFENDANT'S MOTION
TO MODIFY CONDITIONS
OF RELEASE

**MOTION GRANTED IN PART
AND DENIED IN PART
(ECF No. 21)**

Before the Court is Defendant's Motion to Modify Conditions of Release ("Motion to Modify"), **ECF No. 21**. Defendant seeks to modify and/or strike release Condition No. 3 imposed by the Court at ECF No. 16.

Defendant is currently on supervised release in *United States v. James Remington*, No. 2:22-CR-00032-TOR and *United States v. James Remington*, No. 2:22-CR-00033-TOR. On May 2, 2022, Defendant appeared in both matters as a result of a petition for action, post-conviction, filed April 11, 2022, ECF No. 4, alleging violation, Nos. 1-2 ("Supervised Release Petition"). The Supervised Release Petition is the result of a pending state case in Okanogan County charging Defendant with Driving Under the Influence ("DUI Case") in violation of state law. ECF No. 4. The Supervised Release Petition states that breathalyzer tests administered to Defendant in relation to the DUI Case registered .248, .217/.219, and .217/.222. ECF No. 4 at 2.

1 During Defendant's initial appearance on May 2, 2022, in light of the
2 serious allegations set forth in the Supervised Release Petition, the Court imposed
3 Condition No. 3 as follows: "Defendant may not operate any vehicle unless an
4 alcohol Interlock device assigned to Defendant is installed on the vehicle." ECF
5 No. 16 at 1. Defendant now seeks relief from Condition No. 3 on the basis that the
6 condition is a hardship on Defendant and an impediment to his ability succeed on
7 supervised release in a variety of ways. **ECF No. 21.**

8 On August 23, 2022, the Court requested additional information concerning
9 Defendant's DUI Case. ECF No. 22. On August 26, 2022, Defendant provided
10 additional information. ECF No. 23. Defendant indicates that the DUI Case
11 remains pending with an uncertain trial date. ECF No. 23 at 1. Defendant also
12 indicates that the conditions imposed regarding the DUI Case are minimal and do
13 not include a breathalyzer condition and/or any requirement for an ignition
14 interlock device. ECF No. 23 at 2; ECF No. 23-1 at 1.

15 The Court has reviewed Defendant's Motion to Modify Conditions of
16 Release, **ECF No. 21**, and Defendant's Supplemental Briefing, ECF No. 23. The
17 Court is fully informed.

18 Defendant's essential claim is that he cannot afford an ignition interlock
19 device ("IID"). **ECF No. 21** at 4. Defendant notes that he currently works 25
20 hours per week as a cleaner at a rate of 16.50/hr and his employer is aware of his
21 criminal history and supportive of his rehabilitation. **ECF No. 21** at 4-5.
22 Defendant also claims he rides a bicycle seven miles each way to work. **ECF No.**
23 **21** at 5. Defendant further asserts that the IID requirement has prevented him from
24 expanding his job duties by driving a parking lot sweeper and de-icing truck,
25 which would in turn allow him to earn a higher wage of \$25.00/hr and expand his
26 work hours to 40 hours per week. **ECF No. 21** at 5.

27 The Court views gainful employment as an essential element of success on
28

1 supervised release. The Court, however, is also concerned about community
2 safety. The Court cannot ignore that the Supervised Release Petition states that
3 breathalyzer tests administered to Defendant in relation to the DUI Case registered
4 .248, .217/.219, and .217/.222 in the middle of the day and that Defendant was
5 contacted by law enforcement when his vehicle was “traveling at a high rate of
6 speed.” ECF No. 4 at 2. Based on the foregoing then, as the Court understands
7 Defendant’s Motion to Modify Conditions, **ECF No. 21**, if the Court modifies
8 Condition No. 3 in a way that will allow Defendant to expand his job duties,
9 increase his work hours, and increase his current wage by approximately fifty
10 percent from \$16.50/hr to \$25.00/hr. Defendant then should have funds to afford
11 an IID device on his personal vehicle.

12 Accordingly, **IT IS ORDERED** that Defendant’s Motion to Modify
13 Conditions of Release, **ECF No. 21**, is **GRANTED IN PART** and **DENIED IN**
14 **PART**. Release Condition No. 3, ECF No. 16, is modified as follows:

- 15 • **Condition No. 3:** Defendant may not operate any personal
16 motor vehicle unless an alcohol Interlock device assigned to
17 Defendant is installed on the vehicle. Defendant may operate
18 work-related motor vehicles during work hours without an
19 Interlock device if authorized by his employer. Defendant
20 must inform any employer who authorizes him to operate
21 work-related motor vehicles of any pending alcohol related
22 driving cases involving Defendant, including Case No.
23 C35584-ORP pending in Okanogan County District Court.

24 **IT IS SO ORDERED.**

25 DATED September 12, 2022.



26 
27 JAMES A. GOEKE
28 UNITED STATES MAGISTRATE JUDGE